Supreme Court, U.S.
FILED
031069 OCT 15 2003

No. _____

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In The
**Supreme Court of the United States**

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Emma M. Peirce and or Estate, and
Gary R. McElwain and or Estate,
*Petitioners*,
v.
Mellon Bank Corporation,
One Mellon Bank Center, and
Mellon Financial Corporation
Or any entity used,
*Respondents.*

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On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Third Circuit

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**Petition for a Writ of Certiorari**

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Emma M. Peirce
And or Estate,
Pro Se
120 Francis Avenue
Beaver Falls, PA 15010
724-843-5089

Gary R. McElwain
And or Estate,
Pro Se
1498 Maple Street
Rochester, PA 15074
724-643-1901

---

Reed, Smith, LLP *
Diana Wyrick
Thomas Allen
435 Sixth Avenue
Pittsburgh, PA 15219
412-288-3066

*Counsel of Record

## QUESTIONS PRESENTED

Mellon Bank, or any entity used, now called or referred to as Mellon.

1. Did Mellon loan money to three people for personal use?
   Three people being Michael Haben, Ronald Landfair and Thomas Patterson. Now three, called or referred to as principals.
2. Was the money to be used to buy stock in Beaver Falls China to upstart a closed factory?
3. Does Mellon have the stock?
4. Were the supposed orders for three years' work bogus?
5. Did the principals buy a Jeep Cherokee and Jeep Grand Cherokee?
6. Did one of the Jeeps have a trailer hitch installed on it?
7. Did one of the principals buy a home? Did he add an addition?
8. Did the principals file for Chapter 7 Bankruptcy?
9. Was Mellon fixed, and liquidated their loan assets in 1993 by the three principals?
10. Did Mellon lease the factory for over six years?
11. Is Mellon exempt or excluded from paying property taxes?
12. Before tax sale, did Mellon transfer or sell the factory and seven properties to Donald Hopper from Georgia?
13. Did Mellon send Thomas Reilly of Pittsburgh to the Sheriff Sale to buy the property?

14. Did the Sheriff know Mellon had already sold the factory and property lots two months before the sale?
15. Is Mellon excluded or exempt from Bankruptcy Laws?
16. Is Mellon excluded from Pennsylvania Securities' Laws?
17. Does Mellon have insurance to cover their losses?
18. Is Mellon insured by FDIC and Security Investors Protection Corporation (SIPC) and or Bank Insurance Fund?
19. Did Mellon use the same law firm as John O'Leary, Director on Board of Beaver Falls China?
20. Is this a conflict of interest?

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## PETITION FOR A WRIT OF CERTIORARI

To the United States Supreme Court. Emma Peirce and Gary McElwain respectfully request that the United States Supreme Court review the judgment of United States Bankruptcy Court rendered on November 9, 1993.

Support of this request Emma Peirce and Gary McElwain sets forth the following. The United States Bankruptcy Court by order of Judge Judith K. Fitzgerald acted favorably on a petition concerning a case under title for Beaver Falls China and an order of relief under Chapter 7 for individuals, Mike Haben and Ronald Landfair.

Whether the petitioners have been harmed by United States Bankruptcy order dated November 9, 1993, which permitted debt discharge under Chapter 7, when those debts had been incurred by false representation.

## JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on June 25, 2003. (App.1-2). This Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTORY AND CONSTITUTIONAL PROVISIONS

The Petitioners have been denied due process afforded by exceptions to discharge 523A2 under Federal Bankruptcy law.

The opinion of the Supreme Court of Pennsylvania Western District was entered on May 22, 2002. (App. 3). The opinion of the Superior Court of Pennsylvania was entered on December 26, 2001. (App. 4-7). The opinion of the Court of Common Pleas of Beaver County Pennsylvania Civil Action was entered on March 14, 2001. (App. 8-10). Because the extension of credit money the debtors obtained was a product of false pretenses and false representations, which the debtors knew were materially false and which the Petitioners did rely on. The United States Bankruptcy Court erred in granting Chapter 7 petition. (App. 11-18). Additionally the Petitioners have been denied Amendment XIV, United States Constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF CASE

Peirce and McElwain loaned money in good faith to reopen factory. Landfair, Haben and Patterson management team maintained they had enough orders for three years work. Orders were bogus. Four months after opening, these bogus orders were returned to the factory; some were placed in a warehouse in New Jersey. (App. 19-20). Peirce contacted the Pennsylvania Attorney General, Pennsylvania Securities and Federal Bureau of Investigations. The case was turned over to Pennsylvania Securities by Federal Bureau of Investigations and Pennsylvania Attorney General. (App. 21-22).

The company Beaver Falls China is found guilty of fraud. (App. 23-28). Peirce and McElwain are granted judgments under Rule 523A and Rule 790 wages. (App. 29-33). Mellon Bank did not contest the judgments Rule 7041-2.

Peirce filed Lis Pendens and a judgment rule. (App. 34-35) 42pc C.S.A. 4303A. Any judgment shall be lien upon real property. Beaver Falls China files for bankruptcy reorganization under Chapter 11 on June 9, 1993.

Factory leased to Bob Gonze, now called Royal Monarch. Factory leased for over six years from June 9, 1993 to September 1999. (App. 36).

The three individuals who borrowed money from Mellon Bank, Haben, Landfair and Patterson filed Bankruptcy Chapter 7. Court discharged the individuals of debt incurred from Mellon Bank on November 9, 1993.

Mellon Bank transferred property and factory to Donald Hopper from Georgia. The factory now called Brighton China Company, Incorporated. Mellon Bank transfer for monetary consideration of $778,423.76 plus costs and attorney fees totaling $793,906.72. (App. 37-38). From 1993 to 1999, Mellon Bank did not pay property taxes despite collecting $345,000.00 in lease fees having sought tax relief under the guise of Chapter 11. Mellon Bank original loan was $325,000.00.

The transfer of the property to Brighton China Company occurred two months before the Sheriff Sale of the same property on November 8, 1999. (App. 39-40). The Petitioners question the legality of this transfer, Law 5104, particularly since the Petitioners were given no relief for debts occurred fraudulently while Mellon Bank profited handsomely from the transfer.

This case displays an abuse of power conduct and preferential treatment as Mellon Bank has recovered far in excess of it's first mortgage on Beaver Falls real property. It has preferentially benefited from the Bankruptcy Court errant discharge of debt while the Petitioners have suffered

emotionally and financially.

The Petitioners have been denied constitutional accomodation according to the Fourteenth Amendment of the Constitution.

The Court of Common Pleas of Beaver County, Pennsylvania refused to acknowledge our judgments of the United States Bankruptcy Court on behalf of the Petitioners. The Court refused, as well, a trial by a Jury of peers. The Petitioners have been deprived of property without due process of law. Their protection was not equal to the multi-national Mellon Bank Corporation.

State of Pennsylvania has no remedy in the law; Court does not obey states own laws; violation of their own state laws.

The Petitioners were deprived of a fair Jury trial. The Petitioners would like to collect their judgments.

Peirce denied effective assistance of Counsel by Beaver County Bar Association. The Pennsylvania Courts have exceeded their limits.

## SUMMARY

The United States Bankruptcy Court permitted the discharge of debt when that debt was obtained by willful misrepresentation and willful false pretense. The Court of Appeals has disregarded judgments for the Petitioners, while permitting Mellon Bank to profit beyond their first mortgage. The Court may dismiss a complaint only if it is clear that no relief could be granted. The Petitioners believe that relief is possible and respectively request that the Court review this case.

Did the Judiciary practice favortism adherence to rule of law. Pennsylvania Securities are absolutely right their decision was made according to Beaver Falls China dealers. Copy of one bogus order and copy of letter sent to dealers.

This case is a constitional issue, abuse of bankruptcy, and unusual and unethical actions. Mellon Bank claims their actions caused Peirce no harm. Peirce is a widow living on social security and a pension of $98.45 for thirty-five years working in the factory. Peirce used her late husband's life insurance and borrowed on her life insurance to give fellow workers a job.

Fellow worker, Gary McElwain, is a very credible person working six months getting the factory ready for production without a pay check. McElwain also loaned money in good faith. McElwain was granted a judgment in Bankruptcy Court. McElwain is now working 14 to 16 hours a day in order to pay back the money he borrowed to help open the factory.

I, Emma Peirce, take full responsibility for everything said in this case.

## REASONS FOR GRANTING WRIT

Peirce and McElwain have been denied Jury trial. Claim is no discharge pursuant to 523A2-A6 because the extension of credit and money obtained by the debtor was a product of false pretenses and false representation, which the debtor and its principals knew were materially false which claimants did in which rely on and which the debtor and its principals. Case is in conflict with rulings and decisions of law. Bankruptcy rules are wages, taxes and fraud paid first. Violates Peirce and McElwain civil rights Article Seven. Violates Article 14 due process equal protection.

The Court should grant the Petition for Writ of Certiorari because money was loaned in good faith.

1. Claim is no dischargeable pursuant to 523 A2-A6 because the extension of credit and money obtained by the debtor was a product of false pretenses and false representation which the debtor and its principals knew were materially false which claimant did in which rely on and which the debtor and its principals knew that claimant would rely on. Law 1-401-B of 1972 -70 ps-523A2
2. 172-2B Any judgment shall be lien upon real property 42 pc CSA-4303A
3. Pennsylvania crime code 3922-3923, 3927.
4. 212.1 Civil actions to be tried by Jury
5. 1019-a. concise form b. fraud malice-intent knowledge
6. 4011-unreasonable bad faith
7. Seventh - right to trial.
8. Bill of Rights Fourteenth due process
9. 1006-non dischargeable actual or positive fraud.
10. 1028 preliminary objections a failure to conform to law or rule of court.
11. 5104-transfer fraudulent
12. 3129-2 - property sold before notice.
13. 1028-A2 scandalous or impertinent
14. 1019-AB material facts
15. 7041-2 Mellon never contested my judgment in Bankruptcy Court.
16. 790 wages to be paid.
17. 672 - punitive damages and compensatory.
18. 8103D never received judgment, marked satisfied, released and discharged.
19. Mellon-fixed and liquidated 11U.S.C-1112B

abuse of bankruptcy.

20. Law 2051 applies to this case
21. 501-any aggrieved party may appeal.
22. 3134 transfer made two months before Sheriff Sale.

State Laws

Section 1 - Inherent rights of mankind
Section 6 - Trial by Jury.
Section 11 - All Courts shall be open
Section 26 - Civil rights nor discriminate

8327 - all partners are liable. Law referral refused to help. Paid two law firms, they did not show up in Court.

Beaver County Redevelopment withdrew funds from Mellon Bank.

Law 5102D - Property transferred concealed or removed with intent to hinder delay or defraud or that has been transferred in a manner making the transfer fraudulent under this Chapter. Mellon was fixed and liquidated in Chapter 7.

Crime Code of Pennsylvania

3922 Theft by deception
3927 Theft by failure to make required disposition of funds received.

Principals that borrowed money from Mellon Bank to buy stock did not pay for their stock.

The Company's principal bank is Mellon Bank, N.A. ("Mellon"), of which Jeffery L. Leininger, a director of the Company, is a Vice Chairman. In September 1999, the Company entered into a new $90,000,000 credit agreement with Mellon Bank, N.A. and a second bank providing for a $45,000,000 revolving credit facility expiring on September 1, 2004 and $45,000,000 in five year term notes. The Company initially borrowed $19,030,000 under the revolving credit facility, of which $12,686,667 was borrowed from Mellon and the $45,000,000 under the term notes, of which $30,000,000 was borrowed from Mellon. The term notes are repayable in quarterly installments of $1,125,000 with a final payment of $22,500,000 on September 1, 2004. The proceeds were used primarily to repay in full the outstanding borrowings under a credit agreement with Mellon in effect at August 31, 1999.

In certain relationships and related transactions, John O'Leary Jr. was a member of the Board of Directors for Beaver Falls China. O'Leary's company, Tuscarora, has Mellon Bank as the principal bank, and Mellon Bank's Vice Chairman is on Tuscarora's Board of Directors.

498 U.S. 279, 112 L.Ed.2d 755
Coy R. Grogan, et al., Petitioners
v.
Frank J. Garner, Jr.
No. 89-1149.
Argued Oct. 29, 1990.
Decided Jan. 15, 1991.

Creditors brought adversary proceeding against Chapter 11 debtor, seeking determination that debt was no dischargeable for fraud. The United States Bankruptcy Court for the Western District of Missouri, Frank W. Koger, J., 73 B.R. 26, entered judgment for creditors, and the District Court, Dean Whipple, J., affirmed. Debtor appealed. The Court of Appeals for the Eighth Circuit, 881 F.2d 579, reversed, and certiorari was granted. The Supreme Court, Justice Stevens, held that preponderance of the evidence standard, rather than clear and convincing evidence standard, applies to all exceptions from discharge ability of debts contained in Bankruptcy Code § 523(a), including nondischargeability for fraud provision.

Judgment of Court of Appeals reversed.

For conduct to be "willful" so as to permit excepting resulting damages from discharge in bankruptcy under Bankr.Code, 11 U.S.C.A. §523(a)(6), excepting from discharge in bankruptcy debt for willful and malicious injury by debtor to another's property, "willful" conduct requires more than a showing that debtor intended to act, and as a result of his negligent act, damages resulted, even though debtor did not know that would happen; § 523(a)(6) requires the performance of an act with knowledge on the part of the actor that damage will result. In re *Kaufmann*, Bkrtcy. E.D.Wis.1986, 57 B.R. 644.

Conjunctive used of words "willful and malicious," in subsec. (a)(6) of this section, requires that both elements be present in order for debt to be declared no dischargeable. Matter of *Schwenn*, Bkrtcy.Wis.1984, 44 B.R. 746. See, also, *Ohio Grain Co. v. Gentis*, Bkrtcy.Ohio 1981, 10 B.R. 209.

Under Bankr.Code, 11 U.S.C.A. §523 (a)(6), which provides that debt incurred through willful or malicious injury by debtor to property of another is no dischargeable, "willful conduct" is that conduct which is deliberate, intentional, and voluntarily undertaken by debtor, and which is sufficient to cause wrongful act, and "malicious conduct" is that conduct which is done without just cause, or for which there is no rational justification. In re *Schmehl*, Bkrtcy. N.D.Ohio 1986, 57 B.R. 546.

Claim for nondischargeability on basis of false pretenses or false representation will succeed only upon claimant's showing that debtor intended to deceive and knowingly and fraudulently made representations upon which creditor relied to his detriment. In re *Tabers*, Bkrtcy.Ky.1983, 28 B.R. 679.

Where nondischargeabilty of debt is grounded upon debtor's use of false pretenses or false representation or actual fraud, other than statements respecting debtor's or insider's financial, condition, fraudulent intent may be inferred from circumstances of case, debtor's conduct or debtor's silence, and despite debtor's assertion of honest motive, debt will be nondischargable if facts demonstrate that actual fraud has occurred. In re *Saunders*, Bkrtcy.Ohio 1984, 37 B.R. 766.

## CONCLUSION

A court may dismiss a complaint only if it is clear that no relief could be granted. Mellon Bank acted recklessly and with gross negligence.

Because of this case's compelling importance, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Emma M. Peirce
And or Estate,
Pro Se
120 Francis Avenue
Beaver Falls, PA 15010
(724) 843-5089

Gary R. McElwain
And or Estate,
Pro Se
1498 Maple Street
Rochester, PA 15074
(724) 643-1901

App. 1

**UNITED STATES COURT OF APPEAL**
**FOR THE THIRD CIRCUIT**

NO. 02-4422

---

EMMA M. PEIRCE, and or Estate;
GARY R. MCELWAIN, and or Estate,
Appellants

v.

MELLON BANK CORPORATION;
ONE MELLON BANK CENTER;
MELLON FINANCIAL CORPORATION,
And or in any entity used in order to have
an effect on this transaction

---

On Appeal From the United States District Court
For the Western District of Pennsylvania
(D.C. Civ. No. 02-cv-01569)
District Judge: Honorable Joy Flowers Conti

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Submitted Under Third Circuit LAR 34.1 (a)
June 25, 2003

BEFORE: SLOVITER, RENDELL and WEIS,
CIRCUIT JUDGES

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**JUDGMENT**

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on December 4, 2002, be, and the same is, hereby affirmed. Costs taxed against Appellants. All of the above in accordance with the opinion of this Court.

DATED: June 30, 2003

**IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT**

EMMA M. PEIRCE AND/OR ESTATE,

No. 52 WAL 2002

Petitioner

Petition for Allowance of Appeal from Order of the Superior Court

v.

MELLON BANK CORPORATION, ONE MELLON BANK CENTER, MELLON FINANCIAL CORPORATION AND/OR IN ANY ENTITY USED IN ORDER TO HAVE AN EFFECT ON THIS TRANSACTION,

Respondent

**ORDER**

**PER CURIAM**

**AND NOW,** this 22nd day of May 2002, The Petition for Allowance of Appeal is denied.

A True Copy Patricia Honard
As of: May 22, 2002
Attest: Patricia Honard
Chief Clerk
Supreme Court of Pennsylvania

**IN THE SUPERIOR COURT
OF PENNSYLVANIA**

J. A40037/01

EMMA M. PEIRCE AND/OR ESTATE,
Appellant

v.

MELLON BANK CORPORATION, ONE MELLON BANK CENTER, MELLON FINANCIAL CORPORATION AND/OR IN ANY ENTITY USED IN ORDER TO HAVE AN EFFECT ON THIS TRANSACTION,
Appellee

No. 569 WDA 2001

Appeal from the Order Dated March 14, 2001,
In the Court of Common Pleas, Beaver County,
Civil Division, at No. 10002-2001.

BEFORE: ORIE MELVIN, LALLY-GREEN and BROSKY, JJ.

**MEMORANDUM:**

This is an appeal of an Order entered on March 14, 2001 by the Court of Common Pleas dismissing Ms. Emma M. Peirce's ("Appellant") complaint with prejudice. We affirm.

The trial court summarized the facts and the procedural nature of this case as follows:

The matter before the (trial court) is Preliminary Objections filed on behalf of the Defendants, Mellon Bank Corporation and Mellon Financial Corporation, to the Plaintiff's *pro se* Complaint. Therein, the Defendants object to the legal insufficiency of the Complaint as well as the lack of specificity. The Defendants request that we dismiss the Complaint with prejudice…

The Plaintiff claims to be a creditor of a non-party to this action, Beaver Falls China Company. The three principals of Beaver Falls China Company borrowed money from the Defendants to purchase stock in that company but did not pay for it. The Defendants also loaned money to Beaver Falls China Company which was subsequently and improperly discharged in bankruptcy. The Defendants were paid in the bankruptcy proceeding but (Plaintiff0 was not. She claims that she should have been paid before the Defendants.

Trial Court Opinion, 3/14/01, at 1-2.

On appeal, as we can best decipher,[1] Appellant argues that she has been harmed by the Appellees' conduct and she is entitled to a monetary award from the Appellees.

Our review of a trial court's sustaining of preliminary objections in the nature of a demurrer is plenary. ***Huddleston v. Infertility Center***, 700 A.2d 453 (Pa. Super. 1997). Such preliminary objections should be sustained only if, assuming the averments of the complaint to be true, the plaintiff has failed to assert a legally cognizable cause of action. ***Shulick v. Painewebber, Inc.,*** 700 A.2d 534 (Pa. Super. 1997). We will reverse a trial court's decision to sustain preliminary objections only if the trial court has committed an error of law or an abuse of discretion. ***Bocchicchio v. General Public Utilities Corp.,*** 689 A.2d 305 (Pa. Super. 1997).

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[1] Appellant's brief, which fails to comply with Pa. R.A.P. 2101 and, specifically, Pa. R.A.P. 2116, does not clearly state her claim(s) on appeal. Also, as Appellant's brief fails to comply with Pa. R.A.P. 2101 *et seq.*, this appeal could be dismissed or quashed on this basis as well. **See** Pa. R.A.P. 2101.

Instantly, after a careful and thorough review of the record,[2] we agree with the trial court's conclusion that Appellant had failed to state any cognizable cause of action against the Appellees for her loss. Further, we echo the trial court's sentiment that it appears that her claim should have been litigated during the bankruptcy proceedings. According, we find no basis to disturb the trial court's Order.

Order affirmed.

Judgment Entered:
Eleanor R. Valecko
Deputy Prothonotary

Date: December 26, 2001

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[2] We sympathize with Ms. Peirce for her pain and suffering (financially and emotionally), but the facts in this case leave us with no other alternative.

**IN THE COURT OF COMMON PLEAS**
**OF BEAVER COUNTY PENNSYLVANIA**
**CIVIL ACTION**

EMMA M. PEIRCE,
Plaintiff,

vs. No. 10002 of 2001

MELLON BANK CORPORATION and
MELLON FINANCIAL CORPORATION,
Defendants.

**MEMORANDUM AND ORDER**

KUNSELMAN, J. March 14, 2001

The matter before the Court is Preliminary Objections filed on behalf of the Defendants, Mellon Bank Corporation and Mellon Financial Corporation, to the Plaintiff's pro se Complaint. Therein, the Defendants object to the legal insufficiency of the Complaint as well as the lack of specificity. The Defendants request that we dismiss the Complaint with prejudice. We shall do so.

First, we mention that the Plaintiff had submitted a request that this Judge recuse for reasons which were somewhat disjointed and difficult to understant. However, at oral argument, the Plaintiff withdrew this motion.

A review of the Complaint discloses statements and allegations which are incomprehensible. Ordinarily, we would consider granting leave to amend so that serious violations of our rules can be corrected. However, at oral argument the Plaintiff advised the Court as to the basis of her Complaint against these Defendants. From the information in her Complaint and her oral argument, the following facts are apparent.

The Plaintiff claims to be a creditor of a non-party to this action, Beaver Falls China Company. The three principals of Beaver Falls China Company borrowed money from the Defendants to purchase stock in that company but did not pay for it. The Defendants also loaned money to Beaver Falls China Company which was subsequently and improperly discharged in bankruptcy. The Defendants were paid in the bankruptcy proceeding but she was not. She claims that she should have been paid before the Defendants.

She has failed to articulate any cognizable cause of action against these Defendants for her loss and we know of none. It seems to us that her claim should have been litigated in the bankruptcy proceeding. Because there is no cognizable cause of action against these Defendants, an effort to amend the Complaint would be fruitless.

An appropriate Order is attached.

**IN THE COURT OF COMMON PLEAS
OF BEAVER COUNTY PENNSYLVANIA
CIVIL ACTION**

EMMA M. PEIRCE,
Plaintiff,

vs. No. 10002 of 2001

MELLON BANK CORPORATION and
MELLON FINANCIAL CORPORATION,
Defendants.

**ORDER**

KUNSELMAN, J. March 14, 2001

The Preliminary Objections of the Defendants are sustained and the Complaint is dismissed with prejudice.

BY THE COURT

Robert E. Kunselman

**DISCHARGE OF DEBTOR**
**IN RE: (NAME OF DEBTOR)**

Michael D. Haben, 176-32-9600
Linda M. Haben, 189-42-6942

It appearing that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 07/28/93, and that an order for relief was entered under Chapter 7 and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court (or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained);

IT IS ORDERED THAT:

1. The above-named debtor is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
   A. debts dischargeable under 11 U.S.C. Sec. 523;
   B. unless heretofore or hereafter determined by order of this court to be no dischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. Sec. 523 (a);
   C. debts determined by this court to be discharged.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated 11/9/93
BY THE COURT
Judith K. Fitzgerald
United States Bankruptcy Judge

CREDITORS HOLDING SECURED CLAIMS
Case No. 93-22633-JKF

Mellon Bank
P.O. Box 36006IM
Pittsburgh, PA 15251
Claim amount: $429,079.30
Unsecured: $423,669.30
Liable: Joint
Date incurred: 4/1/92

Nature of lien:

Guaranty liability of Debtors relating to loan for purchase of Beaver Falls China, Inc. Lien on all real property of Debtors' located in Lawrence and Beaver counties.

Codebtors(s): Ronald and Janet Landfair
Thomas and Jill Patterson
Claim is: Fixed and liquidated

Mellon Bank
P.O. Box 36006IM
Pittsburgh, PA 15251

Amount of claim: $16,000.00
Liable: Husband
Date incurred: 5/1/92

Consideration for claim:
Guaranty liability on loan for purchase of 1992 Jeep Cherokee Laredo titled to Beaver Falls China, Inc.

Codebtor(s): Ronald and Janet Landfair

**DISCHARGE OF DEBTOR**
**IN RE: (NAME OF DEBTOR)**

Ronald J. Landfair, 166-44-1117
Janet E. Landfair, 176-36-1279, aka
Janet Pease

It appearing that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 08/20/93, and that an order for relief was entered under Chapter 7 and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court (or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained);

IT IS ORDERED THAT:

1. The above-named debtor is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
   A. debts dischargeable under 11 U.S.C. Sec. 523;
   B. unless heretofore or hereafter determined by order of this court to be no dischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. Sec. 523 (a);
   C. debts determined by this court to be

discharged.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated 12/20/93
BY THE COURT
Judith K. Fitzgerald
United States Bankruptcy Judge

CREDITORS HOLDING SECURED CLAIMS
Case No. 93-22918-JKF

Mellon Bank
P.O. Box 36006IM
Pittsburgh, PA 15251

Mellon Bank Master Card
Credit Card Dept.
P.O. Box 15396
Wilmington, DE 19886

**SUPERIOR COURT OF NEW JERSEY**
Judgment No. J-125095-96
Case No. L-002715-93

Jill L. Patterson
Thomas E. Patterson

Type of Action: Contract
Venue: Mercer

Creditor(s): Mellon Bank, N.A.
Attorney: Mark E. Herrera & Associates
Debt: $195,080.05
Dated Signed: 06/10/96

**SUPERIOR COURT OF NEW JERSEY**
Judgment No. J-125091-96
Case No. L-002714-93

Jill L. Patterson
Thomas E. Patterson

Creditor(s): Mellon Bank, N.A.
Attorney: Mark E. Herrera & Associates
Debt: $478,666.19
Dated Signed: 06/10/96

**United States Bankruptcy Court**
**District of New Jersey**
**402 East State Street**
**Trenton, NJ 08608-1507**

In re
Thomas Edward Patterson, 146-44-6384
Jill Lee Patterson, 151-46-0604

Case No. 96-34929
Chapter: 7

17 Locke Court
Trenton, NJ 08628

## DISCHARGE OF DEBTOR

It appears that a petition commencing a case under Title 11, United States Code, was filed by or against the person named above on 6/7/96, that an Order for Relief was entered under Chapter 7, and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the Court (or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained).

**IT IS ORDERED THAT:**

1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this Court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. §523;

(b) unless heretofore or hereafter determined by order of this Court to be no dischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) and 11 U.S.C. §523 (a);

(c) debts determined by this Court to be discharged.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void in paragraph 2 above are enjoined from institution or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated: November 4, 1996

BY THE COURT

Honorable William H. Gindin
United States Bankruptcy Judge

BEAVER FALLS CHINA COMPANY, INC.
Post Office Box #541
Beaver Falls, Pennsylvania 15010

Beaver Falls China

Purchase Order No. 106

Date Entered: 3/23/92

Ship Date: 11/20/92

To: Trumps Plaza Hotel & Casino
Boardwalk at Misissippi Avenue
Atlantic City, NJ 08401

Ship To: Trumps Warehouse
Canale Dr. & Parkway Blvd.
Pleasantville, NJ 08232

Buyer 041004
Freight Third Party

Pattern: BF 210355 New Yorker

App. 20

| Qty. (Dozen) | Item No. | Description. | Unit Cost |
|---|---|---|---|
| 30 | 051729 | Bouillon Stacking | 48.70 |
| 20 | 000101 | Bowl, Grapefruit 6 | 52.20 |
| 120 | 022127 | Footed Mug | 89.70 |
| 20 | 001051 | Pitcher 3 ½ Dozen | 67.50 |
| 20 | 050122 | Plate 6 ¼" | 47.00 |
| 45 | 050137 | Dinner Plate 10 ¼" | 53.00 |
| 30 | 050130 | Salad Plate 8 3/8" | 66.70 |

September 20, 1994

RE: Beaver Falls China Company (BFCC)
Investigations Docket #9312-3

The Pennsylvania Securities Commission (Commission), which oversees the offer, sale and issuance of securities in Pennsylvania, is currently conducting a private investigation involving the above-captioned subject. The purpose of this inquiry is to determine whether there has been compliance with the provisions of the Pennsylvania Securities Act of 1972 (1972 Act). Many inquiries of this kind are routinely conducted by Commission staff and no wrongdoing by the subject company, its officers, directors, or employees should be assumed.

Records indicate that your company ordered china products from BFCC during 1992 and 1993. It would greatly assist our investigation if you would submit to the attention of the undersigned, documentation reflecting DeBolt Company Purchase Orders sent BFCC from January, 1992 through March, 1992 including the dollar amount of the orders.

A self-addressed stamped envelope is enclosed for your convenience or you may fax the list to the undersigned at (412) 565-7646. Please include dates and amounts of the purchase orders and if you ever received an order from BFCC for

which you submitted no PO. If you have any questions regarding this request, please do not hesitate to contact me at (412) 565-5083.

Sincerely,
PENNSYLVANIA SECURITIES COMMISSION

Mary Ann Vallus
Securities Investigator

**COMMONWEALTH OF PENNSYLVANIA**
**BEFORE THE**
**PENNSYLVANIA SECURITIES**
**COMMISSION**

ADMINISTRATIVE PROCEEDING
Docket No. 9312-3

IN THE MATTER OF
*Beaver Falls China Company, Inc.
Thomas E. Patterson
Michael D. Haben
Ronald J. Landfair, Respondents

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

WHEREAS, the staff of the Pennsylvania Securities Commission (Commission) pursuant to the authority conferred by Section 35.14 of the General Rules of Administrative Practice and Procedure ("GRAPP") (1 Pa. Code §35.14), issued to the above-named Respondents on June 12, 1996 which was re-issued on July 5, 1996, an Order to Show Cause ("Order") containing allegations of violation of the Pennsylvania Securities Act of 1972 ("1972 Act") by obtaining money by means of untrue statements of material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading.

WHEREAS, said Order was lawfully served upon Respondent Beaver Falls China Company, Inc. (BFCC) on July 8, 1996 at the address of

BFCC's counsel, Ronald J. Brown, Grogan, Graffam, McKinley & Lucchino, P.C., Three Gateway Center, 22nd Floor, Pittsburgh, Pennsylvania 15222-1009.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Respondents

1. At all times material herein, Beaver Falls China Company, Inc. (BFCC), was an entity located in Beaver Falls, Pennsylvania and was an "issuer" within the meaning of Section 102(l) of the 1972 Act, 70 P.S. §1-102(l). The principal business of BFCC was to design, manufacture, and distribute commercial chinaware and ancillary items for the hotel and restaurant industry in the United States and Canada.
2. At all times material herein, Thomas E. Patterson (Patterson) whose address is 17 Locke Court, West Trenton, New Jersey 08628, was the President of BFCC, and, at all times material herein, was a "control" person and an "affiliate" of BFCC within the meaning of Sections 102(g) and (b) of the 1972 Act, 70 P.S. §§1-1-2(g) and (b). As a "control" person and an "affiliate," Patterson caused BFCC to commit the herein alleged acts and practices which violated the 1972 Act.
3. At all times material herein, Michael D. Haben (Haben) whose address is PO Box 4820, Syracuse, New York 13221-4820,

was an Executive Vice President of BFCC and, at all times material herein, was a "control" person and an "affiliate" of BFCC within the meaning of Section 102(g) and (b) of the 1972 Act, 70 P.S. §§1-102(g) and (b). As a "control" person and an "affiliate," Haben caused BFCC to commit the herein alleged acts and practices which violated the 1972 Act.

4. At all times material herein, Ronald J. Landfair (Landfair) whose address is 903 Fifth Street, Beaver Falls, Pennsylvania 15010, was an Executive Vice President of BFCC and, at all times material herein, was a "control" person and an "affiliate" of BFCC within the meaning of Section 102(g) and (b) of the 1972 Act, 70 P.S. §§1-102(g) and (b). As a "control" person and an "affiliate," Landfair caused BFCC to commit the herein alleged acts and practices which violated the 1972 Act.

COUNT 1
SECTION 401(b) OF THE 1972 ACT,
70 P.S. §1-401(b)
VIOLATIONS OF THE SECURITIES
ANTI-FRAUD PROVISION

5. The allegations set forth in paragraphs 1 through 4 are incorporated herein by reference as if set forth in their entirety.

6. During the period February 25, 1992 to April 27, 1992, in the Commonwealth of Pennsylvania, BFCC, Patterson, Haben and

Landfair, Respondents herein, in connection with the offer and sale of BFCC stock to Pennsylvania investors, obtained money by means of untrue statements of material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as more fully described below.

7. As part of and in furtherance of the above conduct, Respondents BFCC, Patterson, Haben and Landfair would and did represent in a Confidential Private Offering Memorandum dated April 6, 1992 (memorandum) that BFCC had "received to date firm orders for $453,776 worth of chinaware from reputable sources in the industry," when firm orders for BFCC chinaware as of April 6, 1992 were but a small fraction of the amount set forth in such memorandum.

8. As part of and in furtherance of the above conduct, Respondent Patterson would and did:

   A. Orally represent to employees during an "investment meeting" that BFCC had secured approximately $500,000 in pre-production china orders and that BFCC had placed enough orders to maintain company operation for three years without requiring solicitation of new customers when such representations were without basis.

   B. Orally represent to employees

during an "investment meeting" that future BFCC order projections were for several millions of dollars for the initial years of business operations when such representations were without basis.

9. By reason of the foregoing, Respondent BFCC violated Section 401(b0 of the 1972 Act, 70 P.S. §1-401(b).

NOW THEREFORE, the Commission further finds that it is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provision of the 1972 Act, to issue the following:

ORDER

AND NOW, this 21st day of May, 1997, the Commission ORDERS that:

1. Respondent Beaver Falls China Company, Inc. IS ORDERED to comply with the 1972 Act and with the Regulations adopted by the Commission, and in particular Section 401 thereof;
2. Respondent Beaver Falls China Company, Inc. is BARRED, for a period of five (5) years, from offering or selling, in the Commonwealth of Pennsylvania, securities issued by it unless Respondent retains counsel knowledgeable and experienced in securities laws who shall make all applicable filings with the Commission;
3. Should Respondent Beaver Falls China Company, Inc. fail to comply with any and all provisions of this Order, the Commission

may impose additional sanctions and costs and seek other appropriate relief subject to the Respondents' right to a hearing pursuant to the 1972 Act.

BY ORDER OF THE COMMISSION:
M. Joanna Cummings, Secretary

May 22, 1997
Date issued and entered

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Bankruptcy No. 93-22059-JLC
Chapter 11

Motion No. FSG-5-7-98
Filed pursuant to local Bkr.
Rule 9013.4 6(b)

IN RE:

BEAVER FALLS CHINA COMPANY, INC.
Debtor

BEAVER FALLS CHINA, CO., INC.
Movant,

v.

Mellon Bank, N.A.; Small Business Administration, An Agency of the United States of America; Beaver County Corporation for Economic Development; Corporation for Owner/Operator Projects; Commonwealth of Pennsylvania, Office of Vocational Rehabilitation; Royal Monarch Ltd., Internal Revenue Service; Commonwealth of Pennsylvania, Department of State; Commonwealth of Pennsylvania, Department of Revenue; Commonwealth of Pennsylvania, Department of Labor and Industry; Treasurer of Beaver County; Daniel P. Cellini, Tax Collector of

the City of Beaver Falls; City of Beaver Falls; Municipal Water Authority; Travelers Insurance Company and Its Affiliates; Buffalo China Company, Inc.; The Estate of Emma Peirce; and Beaver Valley Power Company,

Respondents.

21. The Respondent, The Estate of Emma Peirce ("Peirce Estate") of 120 Francis Avenue, Beaver Falls, Pennsylvania 15010 obtained a judgment against the Debtor arising from a Commonwealth of Pennsylvania, Securities and Exchange Commission action regarding the sale of the Debtor's capital stock to Emma Peirce.

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

BEAVER FALLS CHINA CO., INC., Debtor

Case Number 93-22059/JLC
Motion Number SMG-12
Chapter 11
Filed per LBR 9013.4 ¶ 6 (c)

ORDER AND NOTICE OF HEARING ON APPROVAL OF SETTLEMENT

TO ALL CREDITORS AND PARTIES IN INTEREST:

IT IS HEREBY ORDERED AND NOTICE IS GIVEN THAT A MOTION TO APPROVE COMPROMISE WITH THE DEBTOR AND GARY R. McELWAIN, HAS BEEN FILED IN THE ABOVE-CAPTIONED ESTATE.

1. Summary and reason for settlement:
It is agreed that creditor Gary R. McElwain, shall have a general unsecured claim of $23,331.00 to be paid on accordance with the plan provisions made for this class of creditors. Settlement agreed to by Debtor and unsecured creditors committee to avoid further costs and risks of Litigation.

2. November 8, 1994, at 1:30 P.M., is fixed for hearing on this matter in Room 1603 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania. You may object to the settlement; if you do, you must file it with the Clerk by November 1, 1994. It should specifically state the basis of the objection, and you are required to be present at the hearing.

3. Movant shall serve a copy of this Order and Notice on all creditors (or their official committee), other parties in interest, the Debtor and the trustee, (if a trustee has been appointed), by mail, and will file a certificate of such service within five (5) days hereof.

Joseph L. Cosetti
Bankruptcy Judge

Date: October 4, 1994
cm: Daniel J. Gates, Esq.

| **93-22059** | **Debtor Name: Beaver Falls China Co., Inc.** |
|---|---|
| Claim Number: 99 | Creditor Name:<br>Emma Peirce<br>120 Francis Avenue<br>Beaver Falls, PA 15010 |
| Claim date: 11/06/97<br>Claim filed late: n | Amendment:<br>Amendment of 93 |
| Amount | Class |
| 42,076.55 | Secured |
| Total: $42,076.55 | |
| Amount Allowed: 0.00 | Desc: money loaned |

| **93-22059** | **Debtor Name: Beaver Falls China Co., Inc.** |
|---|---|
| Claim Number: 98 | Creditor Name:<br>Gary R. McElwain<br>456 Virginia Avenue<br>Midland, PA 15059 |
| Claim date: 11/06/97<br>Claim filed late: n | Amendment:<br>Amendment of 79 |
| Amount | Class |
| 85,706.58 | Secured |
| Total: $85,706.58 | |
| Amount Allowed: 0.00 | Desc: money loaned |

## LIS PENDENS

Emma M. Peirce, Peirce Estate, pro se
120 Francis Avenue
Beaver Falls, PA 15010

vs.

Beaver Falls China Company
Second Avenue and Sixth Street
Beaver Falls, PA 15010

Filed or Issued: December 15, 1998

**BEING:** The same pieces and parcels and buildings in the city of Beaver Falls, Beaver County, PA by Deed Book-1481-Pages 270 thru 276

Beaver County Prothonotary
MAE PHILLIS
Beaver, PA 15009

Receipt Date: 01/29/97
Receipt Time: 13:29:49
Receipt No. 134294

EMMA PEIRCE (VS) BEAVER FALLS CHINA ETAL
Case Number 1997-30278
Received of EMMA PEIRCE
MAH
Total Check 0.00
Total Cash 9.50
Change 0.00
Receipt Total 9.50

Distribution Of Payment

| Transaction Description | Payment Amount |
|---|---|
| JUDGMENT NOTE | 9.00 |
| TAX | 0.50 |
| | 9.50 |

TREASURER OF BEAVER COUNTY
BUREAU OF RECEIPTS & CNTR.M.D.

In addition, the Debtor leased its real and personal property to Royal for the consideration of:

A. Four Thousand Six Hundred Dollars ($4,600) in rent; plus

B. A royalty ("B Royalty") of three percent (3%), commencing in the fifth full calendar month the lease commences, based on net sales of china produced or decorated by Royal at the Debtor's Beaver Falls facility, but shall not exceed $5,000 in any calendar month with any excess to be carried to subsequent months. The B Royalty will expire, however, upon the earlier of sixty (60) months or Royal Closing on the option to purchase Debtor's real and personal property.

Mellon shall receive payment under the Plan on account of its first mortgage on BFCC's real property based on a $417,000 loan balance at an interest rate of seven and one-half percent (7-½%) for a term of fifteen (15) years in the sum of $3,888.88. This payment shall come from the B Royalty and Rental to the extent there are funds available after payment of expenses and the Classes other than CED as provided under the Plan.

**WRIT OF EXECUTION**
**(MONEY JUDGMENTS)**
Rules P.R.C.P.3101 to 3149

BRIGHTON CHINA, COMPANY, INC.,
vs.
BEAVER FALLS CHINA COMPANY, INC.,

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF BEAVER

No. 31271 Year 1999 E.X.
No. 31271 Year 1999 D.S.B.

WRIT OF EXECUTION
(MONEY JUDGMENTS)

To the Sheriff of BEAVER, County, Pennsylvania.

To satisfy the judgment, interest and costs against BEAVER FALLS CHINA COMPANY, INC., Defendant(s);

(1) You are directed to levy upon the property of the defendant(s) and to sell his, her (or their) interest therin; (inquisition and Exemption Laws waived and Condemnation agreed to)

(2) You are also directed to attach the property of the defendant not levied upon in the possession of as garnishee(s) and to notify the Garnishee(s) that

(a) an attachment has been issued;

(b) the garnishee(s) is enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof.

(3) If property of the defendant not levied upon and subject to attachment is found in the possession of anyone other than the named garnishee(s), you are directed to notify him that he has been added as a garnishee and is enjoined as above stated.

| **Amount due** | **$778,423.76** |
|---|---|
| Interest from 8/2/99 thru 12/1/99 | $15,483.16 |
| Attorney Pd. | |
| Attorney's Commission | |
| This Writ Pd. | $24.00 |
| Judgment Pd. | $24.50 |
| Satisfaction due | $8.00 |

DATED: September 1, 1999
Attorney: Thomas E. Reilly
Mae Phillis, Prothonotary, Court of Common Pleas of Beaver County, Pennsylvania

Law Offices
DAVIS REILLY
Eleventh Floor, Frick Building
437 Grant Street
Pittsburgh, PA 15219-6101

September 22, 1999

Estate of Emma Peirce
120 Francis Avenue
Beaver Falls, PA 15010

RE: NOTICE OF EXECUTION SALE OF REAL PROPERTY AND PERSONAL PROPERTY
Beaver Falls China Company, Inc.
Sixth Street and Second Avenue
Beaver Falls, PA 15010
Judgment No. 31271 of 1999
Execution No. 31271 of 1999

Dear Estate of Emma Peirce:

The undersigned, as attorneys for Brighton China Company, Inc., hereby notify you that the real and personal property of Beaver Falls China Company, Inc. will be offered for sale by the Sheriff of Beaver County for the purpose of satisfying the judgment of Brighton China Company against Beaver Falls China Company, Inc.

The sale will be held on October 4, 1999 at 10:00 a.m. at the Office of the Sheriff of Beaver County, Beaver County Courthouse, Beaver, PA

15009. If the sale takes place as set forth, a schedule of distribution will be filed by the Sheriff on a date specified by the Sheriff not later than thirty (30) days after the sale and distribution will be made in accordance with that schedule unless exceptions are filed within ten (10) days after the filing of said schedule.

ADDENDUM

We have also attached a consent to the sale with Waiver of Thirty Days Notice. In the event that the Estate of Emma Peirce does not waive the thirty day requirement and consent to the sale in writing, the sale will be postponed until November 8, 1999 and notice of the postponement will be announced to the bidders assembled on October 4, 1999.

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMMA M. PEIRCE
AND/OR ESTATE, and
GARY R. MCELWAIN
AND/OR ESTATE,
Plaintiffs,

vs. Civil Action 02-1569

MELLON BANK CORPORATION,
ONE MELLON BANK CENTER, and
MELLON FINANCIAL CORPORATION,
Defendants.

## REPORT AND RECOMMENDATION

### I. Recommendation:

It is respectfully recommended that the motion to dismiss the complaint filed by defendants Mellon Bank Corporation and Mellon Financial Corporation (Docket No. 4) be granted, and that the complaint also be dismissed as to defendant One Mellon Bank Center.

**II. Report:**

Presently before the Court is a motion to dismiss the complaint for failure to state a viable claim submitted by defendants Mellon Bank Corporation ("Mellon Bank") and Mellon Financial Corporation ("Mellon Financial") (collectively, the "Mellon defendants").[1]

The plaintiffs, Emma M. Peirce and Gary R. McElwain, proceeding pro se, commenced this action against the defendants for their alleged misconduct in loaning money to several individuals (none of whom are parties to this suit), leasing the property of Beaver Falls China Company ("Beaver Falls China"), a bankrupt company to which they

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[1] One Mellon Bank Center, an office building, is also named as a defendant in the complaint, and that is where service appears to have been effectuated on the Mellon defendants. Service on One Mellon Bank Center does not appear to have been effectuated, and the complaint contains no allegations against it.

loaned money (which is not a party to this suit), and obtaining a judgment in the bankruptcy proceedings for Beaver Falls China, whereas the plaintiffs did not.

In a nearly unintelligible complaint, the plaintiffs allege as follows: that Emma Peirce holds a judgment against Beaver Falls China for having loaned it money, but her judgment was not satisfied, as Beaver Falls China filed for bankruptcy; that Mellon Financial made personal loans to principals of Beaver Falls China so they could purchase stock in the company, but they never purchased said stock; that Ms. Peirce filed a lien against Beaver Falls China in its bankruptcy proceedings, but her judgment was improperly discharged there; that from June of 1993 to September of 1999, Mellon Financial leased Beaver Falls China to an entity named Royal Monarch (a non-party to this suit) for $4600 per month, during which time it paid no taxes on the property; that on September 1, 1999, an entity named Brighton China (a non-party to this suit) took over a lien or debt, for which it paid Mellon Financial $853,652.98; that Mellon Financial never contested Ms. Peirce's claim against Beaver Falls China, and her judgment takes priority over that of Mellon Financial; that Mr. McElwain's wages should be paid; and that Mellon Financial has acted recklessly and with gross negligence. In seeking to enforce Ms. Peirce's judgment, the plaintiffs invoke the Court's federal question jurisdiction.

The record shows that on January 2, 2001, plaintiff Emma Peirce filed a virtually identical complaint (as that filed here) against the defendants in the Court of Common Pleas of Beaver County, PA at case number 10002-2001.[2] The defendants filed preliminary objections to Peirce's state court complaint on grounds it failed to state a viable claim. On March 14, 2001, after hearing oral argument on the matter, the Court of Common Pleas issued a Memorandum and Order which sustained the preliminary objections, and it dismissed the complaint with prejudice, explaining:

> A review of the Complaint discloses statements and allegations which are incomprehensible...However, at oral argument the Plaintiff advised the Court as to the basis of her Complaint against these defendants. From the information in her Complaint and her oral argument, the following facts are apparent.

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[2] A copy of Ms. Peirce's state court complaint against the defendants is attached to the Mellon defendants' brief in support of their present motion at tab D.

> The plaintiff claims to be a creditor of a non-party to this action, Beaver Falls China Company. The three principals of Beaver Falls China Company borrowed money from the Defendants to purchase stock in that company but did not pay for it. The Defendants also loaned money to Beaver Falls China Company which was subsequently and improperly discharged in bankruptcy. The defendants were paid in the bankruptcy proceeding but she was not. She claims that she should have been paid before the Defendants.
>
> She has failed to articulate any cognizable cause of action against these Defendants for her loss and we know of none. It seems to us that her claim should have been litigated in the bankruptcy proceeding...[3]

Ms. Peirce appealed the matter to the Pennsylvania Superior Court. On December 26, 2001, after reviewing the parties' briefs on the matter, the Superior Court issued a Memorandum affirming the dismissal of the complaint for failure to

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[3] A copy of the state court's March 14, 2001 Memorandum and Order is attached as an exhibit to the plaintiffs' complaint, as well as to the Mellon defendants' brief in support of their present motion at tab A.

state a claim.[4]

Peirce then appealed the Superior Court's ruling to the Pennsylvania Supreme Court. In an Order dated May 22, 2002, the Pennsylvania Supreme Court denied her petition for allowance of appeal.[5] On September 12, 2002, plaintiffs Peirce and McElwain filed their complaint in this Court, which mirrors Peirce's state court complaint.

The Mellon defendants have moved to dismiss the complaint for failure to state a claim upon which relief may be granted. They argue that Peirce's claims are barred by the doctrine of res judicata, and further, that her claims and those of Mr. McElwain

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[4] A copy of the Superior Court's December 26, 2001 Memorandum is attached to the Mellon defendants' brief in support of their present motion at tab B.

[5] A copy of the Pennsylvania Supreme Court's Order of May 22, 2002 is attached to the Mellon defendants' brief in support of their present motion at tab C.

fail to state a cognizable claim.[6]

In reviewing a motion to dismiss, all well-pleaded allegations of the complaint must be accepted as true and viewed in a light most favorable to the non-movant. Estelle v. Gamble, 429 U.S. 97 (1976); Semerenko v. Cendant Corp., 223 F.3d 165, 180 (3d Cir. 2000).

Under the doctrine of res judicata, a party is precluded from litigating a matter that has already been adjudicated and is essential to the decision.

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[6] Our review of the above-cited state court rulings does not convert the defendants' present motion to one for summary judgment, for "a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." In re Donald J. Trump Casino Securities Litigation, 7F.3d 357, 368 n.9 (3d Cir. 1993). Here, the plaintiffs have appended to their complaint several state court rulings and documents (as well as bankruptcy court documents) to buttress their claims.

Gregory v. Chehi, 843 F.2d 111, 116 (3d Cir. 1988).[7] The doctrine is viewed as a means of reducing the "costs and vexation of multiple lawsuits' and conserving judicial resources. Rider v. Com. of Pa., 850 F.2d 982, 989 (3d Cir. 1988), cert. denied, 488 U.S. 993 (1988) (citation omitted).

To determine if Ms. Peirce's federal complaint is barred by res judicata due to the dismissal of her state court complaint, we must look to the law of the adjudicating state, i.e., Pennsylvania. See, O'Leary v. Liberty Mut. Ins. Co., 923 F.2d 1062, 1064 (3d Cir. 1991). Under Pennsylvania law, the doctrine of res judicata provides: "a final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or their privies, on the same cause of action."

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[7] Res judicata is often analyzed to consist of "issue preclusion" and "claim preclusion". Issue preclusion, also referred to as direct or collateral estoppel, refers to "the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided." Migra v. Warren City School Dist. Bd. of Ed., 465 U.S. 75, 77 n.1 (1984). Claim preclusion refers to "the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit." Id.

Daniels v. PA. Public Utility Comm'n., 1998 WL 404545, *3 (E.D.Pa., July 15, 1998), aff'd., 1999 WL 516765 (3d Cir., April 20, 1999) [Table], cert. denied, 528 U.S. 1006 (1999), quoting Delaware River Port Auth. v. PA. Public Utility Comm'n., 182 A.2d 682, 685 (Pa. 1962).

Under Pennsylvania law, res judicata will bar a subsequent suit if the two actions share an identity of: (1) the thing sued-upon or for; (2) the cause of action; (3) the persons and parties to the action; and (4) the capacity of the parties to sue or be sued. O'Leary, supra. 923 F.2d at 1065; Daniels, 1998 WL 404545, at *3. With respect to Emma Peirce, these criteria are satisfied. That is, Peirce's state court complaint and her virtually identical federal complaint make the same allegations, against the same defendants, and seek the same relief -- namely, that her judgment against Beaver Falls China be satisfied. In both cases, the capacity of the parties is identical, as Ms. Peirce, individually, and on behalf of an unnamed Estate has sued the defendants. Since the defendants obtained a final, valid judgment against Ms. Peirce in her state court suit, her federal complaint is barred by res judicata.[8]

[8] The fact that Mr. McElwain is a co-plaintiff to Ms. Peirce in this case does not prevent res judicata from barring her claims. Romah v. Romah, 600 A.2d. 978, 981 n.3 (Pa. Super 1991).

In addition, the complaint fails to state a cognizable claim. With respect to named defendants Mellon Bank and One Mellon Bank Center, there are no allegations in the complaint against them. As to defendant Mellon Financial -- which is said to have acted recklessly and with gross negligence -- the complaint fails to allege how it harmed the plaintiffs, or why it is liable for the debts allegedly owed them by non-party Beaver Falls China. For these reasons, the complaint should be dismissed for failure to state a viable claim.

Therefore, it is recommended that the motion to dismiss the complaint filed by defendants Mellon Bank and Mellon Financial be granted, and that the complaint also be dismissed as to defendant One Mellon Bank Center.

Within ten (10) days after being served with a copy, any party may serve and file written objections to this Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,
Robert C. Mitchell
United States Magistrate Judge

Dated: November 5, 2002

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMMA M. PEIRCE
AND/OR ESTATE, and
GARY R. MCELWAIN
AND/OR ESTATE,
Plaintiffs,

Civil Action 02-1569

vs.

MELLON BANK CORPORATION,
ONE MELLON BANK CENTER, and
MELLON FINANCIAL CORPORATION,
Defendants.

**ORDER**

AND NOW, this 27th day of November, 2002, after the plaintiffs filed an action in the above-captioned case, and after defendants Mellon Bank Corporation and Mellon Financial Corporation moved to dismiss the plaintiffs' complaint, and after a Report and Recommendation was issued by the United States Magistrate Judge, and the parties were granted ten days after being served with a copy to file written objections thereto, and upon consideration of the objections filed by the plaintiffs, and after independent review of the pleadings, and the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

IT IS ORDERED that the motion to dismiss the complaint filed by defendants Mellon Bank Corporation and Mellon Financial Corporation (Docket No. 4) is granted, and that the complaint also is dismissed as to defendant One Mellon Bank Center.

IT IS FURTHER ORDERED that final judgment of this Court is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Judge Conti
United States District Judge